A

PP

v.

MAT KILAU MOHAMAD

B

HIGH COURT MALAYA, ALOR SETAR
ZAMANI A RAHIM J
[CRIMINAL CASE NO: 45-24-2007]
14 APRIL 2011

C ***CRIMINAL LAW:*** *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in cannabis - Prima facie evidence - Drugs found in abandoned lorry - No direct evidence to connect accused as driver of lorry - DNA profiling - Whether chemist not DNA expert - Blood stains in lorry matched blood specimen taken from accused - Failure to determine*
D *time when blood stains left on vehicle - Whether prima facie case proved - Whether accused to be acquitted and discharged*

EVIDENCE: *Expert evidence - DNA analysis - DNA profiling conducted by chemist - Whether chemist did not have enough experience*
E *or training to undertake analysis - Failure to give adequate and sufficient evidence - Whether serious infirmity - Whether chemist not DNA expert - Whether evidence to be rejected*

EVIDENCE: *Admissibility - Expert evidence - DNA profiling - DNA profiling conducted by chemist - Whether chemist did not have enough*
F *experience or training to undertake analysis - Whether chemist not DNA expert - Whether evidence to be rejected*

The accused was charged with the offence of trafficking in 128,392 grams of cannabis under s. 39B(1)(a) of the Dangerous
G Drugs Act 1952 ('the Act') – when a lorry carrying the drugs and allegedly driven and owned by him overturned and landed on the curb of the road at KM 69, North-South Highway. The evidence showed that the accused absconded from the scene of the accident, had not been positively identified by any of the
H prosecution witnesses, and was only arrested by the police some two years after the accident. That notwithstanding, at the hearing, in an effort to prove that the accused was the one driving or running from the lorry, the prosecution adduced evidence of a DNA profiling, conducted by the chemist ('SP13'), which
I confirmed that the DNA profile of the blood stains found in the

lorry had matched those developed from the blood specimen of the accused. SP13 however was unable to determine as to when the blood stains were left on the vehicle, and further, did not adduce evidence as to the number of DNA profiling that she had conducted, or whether her expert opinion had ever been accepted in court. The prosecution also did not call the officer who took the blood samples from the accused for DNA profiling ('Mohamad Syuwaidi') as a witness, and that being so, before the learned judge, primary questions arose as to whether SP13 could be considered as a DNA expert and whether her testimony could be admitted in evidence, and further, whether a *prima facie* case of trafficking, on the facts and in the circumstances, had been made out by the prosecution against the accused.

Held (acquitting and discharging accused without calling for his defence):

(1) Upon the authority of *Nelson Gnanaregasam v. PP,* the non-production of Mohamad Syuwaidi did not weaken or leave any gap as to the identity of the accused's blood specimen. More so since this case involved only the accused, and no other persons or co-accused. (para 31)

(2) There is no evidence, even prior to the accident, as to who was driving the vehicle. The least the prosecution could have done is to produce the CCTV which is normally available at the toll plaza where toll transit ticket, P30, was issued. There was also no evidence to show who issued P30 and whether he knew who was driving the vehicle. (para 17)

(3) SP13 is a scientific officer who did not have any formal training on DNA profiling. The only training she had if at all was in 2005 when she attended a certificate course *inter alia* on DNA profiling. SP13 therefore is not an expert who can be considered to have experience in this area of specialty. She is not a DNA expert and thus her evidence should be rejected. (paras 20-23)

(4) Assuming this court was wrong in rejecting SP13's evidence, there were serious infirmities in the prosecution case in relation to the DNA analysis. The DNA evidence did not specifically prove that the accused was driving the vehicle on the day in question. There was even no evidence to show that the

A accused had suffered from some form of injuries to connect the blood stains to him. An evidence of SP13 which corroborated the evidence of SP7 is that there is no way to determine when the blood stains were left on the vehicle. It thus cannot be said with certainty that the blood stains came
B to be on the vehicle on the date of the accident. It might have been left there before the date of the accident. (paras 28, 32-34)

(5) There was no evidence forthcoming from the prosecution
C whether the compartment between the wall and the plywood (plank) in the back portion of the vehicle was a specially constructed compartment so as to activate the presumption under s. 37(h) of the Act. To establish that the compartment was "specially constructed for the purpose" the prosecution
D would have to adduce evidence from an expert or a person who is entirely familiar with vehicles of the same make. (para 37)

(6) The prosecution failed to prove a *prima facie* case against the
E accused and the accused is hence acquitted and discharged. (para 38)

Case(s) referred to:
Alan James Dohary Gary Adams v. R [1997] 1 Cr App R 369 ***(refd)***
Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
F *Junaidi Abdullah v. PP [1993] 4 CLJ 201 SC* ***(refd)***
Looi Kow Chai & Anor v. PP [2003] 1 CLJ 734 CA ***(foll)***
Magendran Mohan v. PP [2011] 1 CLJ 805 FC ***(refd)***
Nelson Gnanaregasam lwn. PP [2010] 3 CLJ 561 CA ***(foll)***
PP v. Abdul Manaf Muhamad Hassan [2006] 2 CLJ 129 FC ***(refd)***
PP v. Badrulsham Baharom [1987] 1 LNS 72 HC ***(refd)***
G *PP v. Hafiszamri Ahmad & Anor [2007] 1 CLJ 285 CA* ***(refd)***
PP v. Loo Seng Yip [2004] 8 CLJ 496 HC ***(refd)***
PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457 FC ***(foll)***
PP v. Saare Hama & Anor [2001] 4 CLJ 475 HC ***(refd)***
PP v. Syed Muhamad Faysal Syed Ibrahim [2004] 1 LNS 159 HC
H *Saad Ibrahim v. PP [1967] 1 LNS 154 HC* ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 180
Dangerous Drugs Act 1952, ss. 37(da), (h), 39B(1)(a)

I

For the prosecution - Ahmad Zakhi Mohd Daud DPP
For the accused - Jeevaretnam; M/s Jeevaretnam & Co

Reported by Wan Sharif Wan Ahmad

JUDGMENT

Zamani A Rahim J:

[1] The accused was charged with an offence of drugs trafficking under s. 39B(1)(a) Dangerous Drugs Act 1952 ("the Act") and the charge reads as follows:

The Charge

> Bahawa kamu pada 24.2.2005, jam lebih kurang 11.30 pagi di km 69, Lebuhraya Utara Selatan dari arah Alor Setar ke Gurun, di dalam Daerah Pendang, di dalam Negeri Kedah Darul Aman telah mengedarkan dadah berbahaya iaitu 128,392 gram cannabis, dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 boleh dihukum di bawah Seksyen 39B(2) Akta yang sama.

At The Close Of Prosecution Case

[2] At the close of the prosecution's case, the duty of a trial judge is whether the prosecution has made out a *prima facie* case under s. 180 of the Criminal Procedure Code (CPC) and that he must subject the prosecution evidence to a maximum evaluation: see Court of Appeal case of *Looi Kow Chai & Anor v. PP* [2003] 1 CLJ 734. The test was affirmed by the same judge in the Federal Court case of *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457. The meaning of the phrase "*prima facie* case" is not defined in the CPC. However, in the Federal Court case of *Balachandran v. PP* [2005] 1 CLJ 85, Augustine Paul JCA (as he then was) described it as follows:

> A *prima facie* case is therefore one that is sufficient for the accused to be called upon to answer. This in turn means that the evidence adduced must be such that it can be overthrown only by evidence in rebuttal. The phrase "*prima facie* case" is defined in similar terms in *Mozley and Whitney's Law Dictionary*, 11th edn as:

A

> A litigating party is said to have a *prima facie* case when the evidence in his favour is sufficiently strong for his opponent to be called on to answer it. A *prima facie* case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced by the other side.

B

[3] In a recent case of the Federal Court, *Magendran Mohan v. PP* [2011] 1 CLJ 805, the President of the Court of Appeal, Alauddin Mohd Sherif PCA has this to say at p. 824 para 25:

C

> The test at the end of the prosecution's case is "*prima facie* case" based on a maximum evaluation of evidence. The evidence has to be scrutinized properly and not perfunctorily, cursorily or superficially. If the evaluation of the evidence results in doubts in the prosecution's case, then a *prima facie* case has not been made out. The defence ought not to be called merely to clear or clarify such doubts.

D

Possession And Trafficking

[4] In explaining possession in law, the Court of Appeal in *PP v. Hafiszamri Ahmad & Anor* [2007] 1 CLJ 285, Hassan Lah JCA made the following observations at p 294:

E

> Now, as to what the ingredients of possession in law has been established by a long line of cases. We find it unnecessary to discuss all of them here. Suffice that we refer to two of them. In *Toh Ah Lok & Mak Thim v. R* [1949] MLJ 54, Gordon-Smith Ag CJ when delivering judgment of the Singapore Court of Appeal explained the meaning in law of the word "possession" when appearing in the statute. His Lordship said:

F

> > Possession, in order to incriminate a person, must have the following characteristics. The possessor must know the nature of the thing possessed, must have in him a power of disposal over the thing, and lastly must be conscious of his possession of the thing. If these factors are absent, his possession can raise no presumption of *mens rea*, without which (except by statute) possession cannot be criminal.

G

H

[5] The second is *Saad Ibrahim v. PP* [1967] 1 LNS 154 where Yong J stressed the necessity of establishing the ingredient of knowledge on the part of an accused before he could be incriminated with possession. His Lordship there said:

I

> In my opinion mere possession is one thing and possession with *mens rea* is another. Possession which incriminates must have certain characteristics. The possessor must be aware of his possession, must know the nature of the thing possessed and must have the power of disposal over it. Without these characteristics possession raised no presumption of *mens rea*. Without *mens rea* possession cannot be criminal except in certain cases created by statute, which is not applicable in this case.

[6] In *PP v. Badrulsham Baharom* [1987] 1 LNS 72; [1988] 2 MLJ 585 Lim Beng Choon J discussed *mens rea* possession at p 588 as follows:

> I believe it is well settled at least by our courts that to establish possession by an accused person of any dangerous drugs or to impute to him possession of the said drugs it must first be shown that he had knowledge of the drugs which were found to be in his possession. The earliest authority, which I could find, that expounded this principle is the case *Chiah Tian v. Rex* where the then Chief Justice of Singapore said at p 106:
>
> > In my opinion mere possession is one thing and possession with *mens rea* is another. Possession which incriminates must have certain characteristics. The possessor must be aware of his possession, must know the nature of the thing possessed and must have the power of disposal over it. Without these characteristics possession raised no presumption of *mens rea*. Without *mens rea* possession cannot be criminal except in certain cases created by statute, which is not applicable in this case.

[7] As regard trafficking, the prosecution may either seek to prove it by relying on the presumption of trafficking under s. 37(da) or seek to prove by positive or affirmative evidence that the accused was in fact trafficking in the dangerous drugs. If the prosecution is seeking to rely the presumption under s. 37(da), the accused must be proved to have had a *mens rea* possession of the drugs or the irresistible inference that he had such actual or affirmative possession. If the presumption under s. 37(d) is relied upon, the prosecution is barred from relying on the presumption under s. 37(da) as it offends the use of double presumptions, the rule under *Muhammed bin Hassan*. In the Federal Court case of *PP v. Abdul Manaf Muhamad Hassan* [2006] 2 CLJ 129, Arifin Zakaria FCJ (as he then was) had this to say at p 144:

It ought to be stated at the outset that the decision in *Muhammed bin Hassan* only prohibits the use of double presumptions under ss. 37(d) and 37(da) of the Act. It is, therefore, open to the prosecution to rely on either of the presumptions. In other words, the prosecution may positively prove possession without relying on the presumption under s. 37(d) of the Act and go on to rely on the presumption of trafficking under s. 37(da) of the Act to support a charge under s. 39B of the Act. see *Tunde Apatira & Ors v. Public Prosecutor (supra); Msimanga Lesaly v. Public Prosecutor* [2005] 1 CLJ 398 (a decision of the Court of Appeal which was confirmed by this court in Federal Court Criminal Appeal No. 05-27-2004(K). Conversely, the prosecution may rely on the presumption under s. 37(d) to prove possession and seek to prove by affirmative evidence (independent of the presumption under s. 37(da)) that the accused was in fact trafficking in the dangerous drug.

Brief Facts

[8] On 24 February 2005 at about 10.50am, SP3 who works with PLUS was patrolling the highway in the direction of Gurun to Alor Setar together with his colleagues, Ahmad bin Man. At that time they were at KM 69, Gurun – Alor Setar highway and he saw a bonded lorry had overturned at the opposite direction and the lorry had landed on the curb of the road. There were a lot of kampung folks near the lorry.

[9] While he was crossing the road to go to the side where the lorry had overturned, he saw from a distance of 33 feet a person whom he could not identify (was not sure of the race of the person and the colour of the clothing he was wearing) crossing over the fence. He then phoned SP6, Salim bin Abdullah.

[10] On closer examination of the lorry No. WBP 1916, he found that the wall to the back portion had broken and saw some objects, which he suspected to be ganja scattered inside the lorry.

[11] ASP Rosli bin Ismail, SP5 led a police party to the place of the incident and arrived there at 11.30am and he saw some kampung folks near the said lorry. The driver of the vehicle was not there and on examining the back portion of the vehicle, he saw the door was open and scattered inside the vehicle were a lot of objects in compressed form which he suspected to be ganja.

[12] He collected all evidence from the vehicle and later handed them over to the Investigating Officer, C/Inspector Mohd Zaki bin Mahmood, SP12.

[13] The vehicle No. WBP 1916 which is described as a box van in the registration card, P28 is registered under the name of Wong Meng Fei t/a Yu Yi Trading & Transport Sdn Bhd.

[14] However, the documents marked as P44 to P49 which are dated 26 January 2004 and 28 January 2004 suggest that it was sold to the accused but the registered owner's name was not changed to him. On the contrary the document at P29 which is dated 20 June 2004 (about five months after the vehicle was presumably sold to the accused) is a letter of authorisation given by the registered owner to the accused to use the vehicle for personal use.

[15] The chemist, SP13 who did the DNA profiling confirmed that the DNA profiles obtained from blood stains on the cotton swabs 'E2', 'E3' and towel T match with the DNA profile developed from blood specimen 'EE' (labeled Mat Kilau). This is found in P54 and P56. This DNA profiling was carried out by SP13 in April 2005, P54 and August 2007, P56 respectively.

Maximum Evaluation Of Evidence Tendered By Prosecution

[16] What is pertinent to note is that the accused was detained on 25 June 2007 (about two years four months later) in Kulai, Johor. He was not arrested at the scene of the crime or thereabout or on the date of the incident ie, 24 February 2005. None of the witness identified the accused as the person escaping from the scene of the crime. The only piece of evidence is that of SP3 who merely said thus:

> Semasa saya mula-mula menyeberangi jalan untuk pergi ke lori yang terbalik itu, saya lihat ada seorang lelaki menyeberangi pagar tempat orang-orang kampung berkumpul. Saya tidak cam lelaki ini. Saya juga tidak pasti bangsanya. Saya lihat lelaki ini dalam jarak lebih kurang 33 kaki. Saya lihat lelaki itu berjalan dengan cepat semasa dia menyeberangi pagar itu. Saya tidak ingat pakaian yang dipakai oleh lelaki itu.

[17] There is no evidence, even prior to the incident, as to who was driving the vehicle. The least the prosecution could have done is to produce the CCTV which is normally available at the toll plaza where toll transit ticket, P30 was issued. No evidence was available to show who issued P30 and whether he knew who was driving the vehicle.

[18] Next, the prosecution sought to rely on DNA profiling. Puan Erizasyira Basri, SP13, a scientific officer of the Chemistry Department gave expert opinion on DNA profiling in this case. Her report dated 12 April 2005 Laboratory No.: (PJ) FOR 1965/05-0, P54 related to DNA profiling done on cotton swabs and towel.

[19] The other report dated 16 August 2007, Laboratory No.: (PJ) FOR 1965/05-1, P56 was DNA profiling that on a specimen of blood labeled 'Mat Kilau' and matching with DNA profiles obtained from blood stains on cotton swabs and towel.

[20] She is a scientific officer. She obtained a degree in DNA profiling in the year 2010. The only other training if at all she had, was in 2005 when she attended a certificate course *inter alia*, on DNA profiling.

[21] When in 2005 she attended this Certificate Course she was uncertain and did not specifically answer the question. She is not an expert who can be considered to have experience (without the necessary qualification) in this area of speciality as she not only joined the Chemistry Department on 19 May 2003, she did not give any evidence as to the number of DNA profiling she had carried out and whether her expert opinion has been accepted in court.

[22] She received the samples on 1 March 2005 and carried out the analysis from 10 March 2005. At that time other than being a scientific officer, she did not have any formal training on DNA profiling.

[23] Based on the decision of Supreme Court in *Junaidi Abdullah v. Public Prosecutor* [1993] 4 CLJ 201 that since SP13, at the time of conducting the DNA profiling (10 March 2005), neither had the qualification nor experience to carry out DNA profiling, although she is a scientific officer at that time, as DNA profiling

requires special skill, she is not a DNA expert and thus her evidence should be rejected. Mohamed Azmi SCJ said at p. 210 as follows:

> First, does the nature of the evidence require special skill? Second, if so, has the witness acquired the necessary skill either by academic qualification or experience so that he has adequate knowledge to express an opinion on the matter under enquiry? The answer to both questions must necessarily depend on the facts of each particular case. The speciality of the skill required of an expert witness under s. 45 would depend on the scientific nature and complexity of the evidence sought to be proved. The more scientific and complex the subject matter, the more extensive and deeper will the Court be required to enquire in the ascertainment of his qualification or experience in the particular field of art, trade or profession. But in the final analysis in a non jury trial, it is for the trial Judge himself as both Judge of fact and law to determine the weight to be attached to such evidence notwithstanding the outstanding qualification or experience (or the lack of it) of the expert. To use the words of Suffian LP at page 323 in *Muhamed bin Sulaiman* when he applied the case of *Public Prosecutor v. Virammal* AIR 1923 Mad. 178, the jurors themselves, "could have used a magnifying glass or their own eyes and their own mind to the evidence and verify the results submitted to them" by the expert witness. The lack of qualification or experience on the part of the expert must necessarily affect the weight of the evidence rather than admissibility. But where the evidence is of complex and scientific nature, the absence of both qualification or experience can certainly affect admissibility. No hard and fast rule should be laid down on the issue of competency of an expert witness.

[24] What is glaring is that SP13 returned the cotton swabs and towel as stated in her report P54 on 5 July 2005 to SP12.

[25] The blood specimen 'EE', P56 was received on 5 July 2007 and in her evidence she said she did the analysis from 10 July 2007 to 30 July 2007 and found it matches that of 'E2', 'E3' and towel (although it was returned on 5 July 2005). There is no evidence to show how she did the matching in the year 2007 when she had already returned all exhibits (P34 and 34A – P35A – F) in the year 2005.

[26] In the case of *PP v. Loo Seng Yip* [2004] 8 CLJ 496 where the learned judge referred to the English case of *Alan James Dohary Gary Adams v. R* [1997] 1 Cr App R 369 which succinctly described the process of DNA profiling and went on to reject evidence of the DNA expert by saying:

> In the case of DNA evidence it is the number of matches and their DNA characteristics that will explain the relationship between the samples analysed. The number of matches will also facilitate a calculation of the random occurrence ratio. These will constitute the reasons for the conclusion arrived at by the chemist. PW20 merely gave evidence that the result of his analysis is that the DNA profile of Specimen C labelled Loo Seng Yip obtained matched with the DNA profile developed from the blood stains on A4 thereby showing that the DNA identified were consistent with having originated from the same source. He did not explain the nature of the DNA characteristics and the number of matches that were similar. Neither did he explain his finding that the probability of a randomly selected unrelated individuals having this matching DNA profile is approximately one in 14 billion as calculated based on the Malaysian Chinese population data base. PW20 has therefore given evidence only of his conclusions without adverting to the reasons that led to such a conclusion. The fact that the required evidence is in the chemist report makes no difference to his evidence. As PW20 has given oral evidence his report is only of corroborative value (see *Muhammed bin Hassan v. PP* [1998] 2 CLJ 170). It cannot supplement his oral evidence. It is settled law that the purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible (see *Director of Public Prosecutions v. Hester* [1973] AC 296). Thus evidence tendered to corroborate the testimony of a witness can only be used for that purpose and not as a substitute of the substantive evidence itself. PW20's evidence is therefore of no evidential value.

[27] At paragraph 2.8 of the learned deputy written submission where it is stated that in *Loo Seng Yip*'s case, *supra* the expert did not explain the nature of DNA and the reason of his opinion is misleading. At pp 501-503, the expert there and SP13 in this case seems to have given similar inadequate or insufficient evidence.

[28] One other evidence of SP13 which corroborated the evidence of SP7 is that, there is no way of determining when were the blood stains left on the vehicle. It cannot be said with

certainty that the blood stains came to be on the vehicle on the date of the incident. There is a possibility that it was left on the vehicle before the date of incident.

[29] Learned counsel argued that the non-production of Encik Mohamad Syuwaidi bin Saari, who took the blood sample from the accused on the instruction of the Investigating Officer, SP12 as a witness is fatal as he is the only person who can confirm that what is contained in P38B – a tube containing of blood with the accused's name on the label, is in fact the blood sample of the accused, relying on the case of *PP v. Syed Muhamad Faysal Syed Ibrahim* [2004] 1 LNS 159.

[30] In reply for the failure to call Encik Mohammad Syuwaidi bin Saari who took blood specimens from the accused, the learned deputy cited the Court of Appeal case of *Nelson Gnanaregasam lwn. PP* [2010] 3 CLJ 561 where the court opined at p 574 para 13 as follows:

> Mahkamah ini berpendapat bahawa ketiadaan keterangan dari polis yang membawa perayu untuk mengambil sampel darah dan juga doktor yang mengambil sampel darah tidak menjejaskan kes bagi pihak pendakwaan.

[31] Based on *Nelson Gnanaregasam, supra*, the non production of Encik Mohamad Syuwaidi bin Saari has not weakened or left a gap which raised doubt as to the identity of the accused's blood specimen. More so in this case it only involved the accused alone and no other person or co-accused.

[32] Having subjected the chemist, SP13's evidence on a maximum evaluation, there are serious infirmities in the prosecution case in relation to the DNA analysis. SP13's evidence is of little evidential value.

[33] If I am wrong to reject SP13's evidence, at para. 1 of his written submission, the learned deputy concedes there is no direct evidence to connect the accused as the person who drove the vehicle which contained drugs. However it is suggested by the prosecution that since there was DNA evidence and P29, P44-P49 which are documentary evidence to show that the accused owned the vehicle, this is sufficient to connect the accused to the drugs that were found in the vehicle.

[34] As far as the DNA evidence is concerned, it does not specifically prove that the accused was driving the vehicle on the day of the incident. Bear in mind the evidence of SP13 and SP7 who said there is no way of determining when the blood stains were left in the vehicle. On the same point, it is also pertinent to note that there is no evidence from the prosecution to show that the accused had suffered some form of injuries to connect the blood stains to him.

[35] As regard P29, P44-P49, it only suggests that the accused although not the registered owner, may be the owner of the vehicle. There is no cogent, direct or circumstantial, to show that the accused was in control of the vehicle No.: WBP 1916 on 24 February 2005 at about 11.30am or thereabout.

[36] Assuming the accused was present in the vehicle, was the accused alone in the vehicle or with someone else; was the accused the driver of the vehicle at the material time, did the driver know the presence of the drugs at the back portion of the vehicle? There is evidence from the investigating officer, SP12 to show that the drugs were found between the wall of the back portion and plywood as can be seen in photographs, P22A and B. SP12 confirmed that the driver of the vehicle cannot see the drugs from his position as not only the drugs concealed between the wall and plywood of the back portion, from the driver's seat the back portion is shut from view.

[37] Finally, there is no evidence forthcoming from the prosecution whether the compartment between the wall and the plywood in the back portion of the vehicle was a specially constructed compartment so as to activate the presumption under s. 37(h) of the Act. In *PP v. Saare Hama & Anor* [2001] 4 CLJ 475, Vincent Ng J held that the expression compartment, specially, constructed for the purpose used in s. 37(h) means a compartment specially constructed and designed for a special purpose of concealment of offending drugs. To establish that the compartment was 'specially constructed for the purpose' the prosecution would have to adduce evidence from an expert or a person who is entirely familiar with the car and model of the same make as the subject car sold in the country concerned.

Decision At The Close Of Prosecution's Case

[38] For the reasons adumbrated above, following the test of the Court of Appeal case of *Looi Kow Chai & Anor v. PP* [2003] 1 CLJ 734 and the Federal Court case of *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457, I was satisfied that the prosecution had failed to establish a *prima facie* case of drug trafficking against the accused as charged.

[39] Accordingly, the accused is hereby acquitted and discharged.